

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - x

JONATAN BARAHONA and HECTOR HERNANDEZ,  
Plaintiff(s),  
Civil Action No. 2:21-cv-05400

-against-

PARADISE TREE SERVICE & LANDSCAPE, CORP. and  
WILLIAM NIETO,

Defendant(s).

- - - - - x

445 Broadhollow Road  
Melville, New York  
February 6, 2023  
1:37 p.m.

DEPOSITION BEFORE TRIAL of HECTOR  
HERNANDEZ, one of the Plaintiffs, taken by Defendant,  
pursuant to Federal Rules and Regulations, and Court  
Order, held at the above-noted time and place, before  
Lisa Conway, a Stenotype Reporter and Notary Public  
within and for the State of New York.

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A P P E A R A N C E S:

MOSER LAW FIRM, P.C.  
Attorney for Plaintiffs  
5 E. Main Street  
Huntington, New York 11743  
BY: STEVEN J. MOSER, ESQ.

THE LAW OFFICE OF GLENN J. INGOGLIA  
Attorney for Defendants  
104 Long Beach Road  
Island Park, New York 11558  
BY: GLENN J. INGOGLIA, ESQ.

ALSO PRESENT:

Carolina Barbato, Spanish Interpreter  
Eiber Translations

Robert Calvert, Videographer  
In House Video Department, Inc.  
Jonatan Barahona  
William Nieto

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification shall be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1  
2 THE VIDEOGRAPHER: We are now on the  
3 record. This is the video operator  
4 speaking, Robert Calvert, representing  
5 Enright Reporting, offices located at 100  
6 South Main Street, Sayville, New York.  
7 Today's date is February 6, 2023. The time  
8 on the video monitor is 1:37 p.m. We are  
9 here at the offices of Enright Reporting  
10 located at 445 Broad Hollow Road, Melville,  
11 New York to take the videotaped deposition  
12 of Hector Hernandez in the matter of  
13 Jonatan Barahona and Hector Hernandez  
14 versus Paradise Tree Service & Landscape,  
15 Corp., et al. The venue of this case is  
16 the United States District Court for the  
17 Eastern District of New York. The Index  
18 No. is 2:21-cv-05400.

19 Will counsels please voice identify  
20 themselves and state whom they represent.

21 MR. INGOGLIA: Glenn Ingoglia. I  
22 represent William Nieto and Paradise Tree  
23 Service.

24 MR. MOSER: Steven Moser for the  
25 Plaintiffs Jonatan Barahona and Hector



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Hernandez.

THE VIDEOGRAPHER: Will our court  
reporter please swear in the interpreter  
and the witness.

C A R O L I N A B A R B A T O, called as the  
Interpreter in this matter, was duly sworn  
by a Notary Public of the State of New  
York, to accurately and faithfully  
translate the questions propounded to the  
Witness from English into Spanish and the  
answers given by the Witness from Spanish  
into English.

-oOo-

H E C T O R H E R N A N D E Z, the Plaintiff  
herein, having first been duly sworn by the  
Notary Public, through the Interpreter, was  
examined and testified as follows:

EXAMINATION BY

MR. INGOGLIA:

Q State your name for the record, please.

A Hector Antonio Hernandez.

Q State your address for the record, please.

A 22 Cornwall Lane, Hempstead, New York

11550.

1 HECTOR HERNANDEZ

2 Q Mr. Hernandez, my name is Glenn Ingoglia.  
3 I'm going to ask you some questions today. If you  
4 don't understand any one of my questions, please let  
5 me know. Also, this deposition is being transcribed,  
6 so the court reporter can't take down what you say or  
7 what I say if we speak at the same time so I'll just  
8 ask that you let me finish my question before you  
9 start answering.

10 A Okay.

11 Q Also, you must keep all your responses  
12 verbal as the court reporter can't take down nods of  
13 the head or gestures. If at any time you need a  
14 break, let me know and I'll do my best to accommodate  
15 you. I'll just ask if there's a question pending  
16 that you answer it before we break.

17 A Okay.

18 Q Okay.

19 Your current address, 22 Cornwall Avenue in  
20 Hempstead, New York, how long have you lived there?

21 A For three years.

22 Q Who do you live there with?

23 A With my wife.

24 Q What's her name?

25 A Sonia Alvarado, S-O-N-I-A, Alvarado,

1 HECTOR HERNANDEZ

2 A-L-V-A-R-A-D-O.

3 Q Do you live there with anyone else besides  
4 your wife Sonia Alvarado?

5 A No.

6 Q Prior to living at 22 Cornwall Lane, did  
7 you live anywhere else?

8 A Yes.

9 Q Where did you live?

10 A 135 Clinton Street, Hempstead, New York  
11 11550.

12 Q And how long did you live at 135 Clinton  
13 Street?

14 A About eight to nine years.

15 Q Who did you live there with?

16 A With different people.

17 Q Did you ever live with Mr. Barahona?

18 A No.

19 Q Did you ever live with Jorge Maldonado?

20 A No, the houses are together.

21 Q What house?

22 A Well, Jorge used to live here and I used to  
23 live next to it. They belong to the same landlord.

24 Q Was that at 135 Clinton?

25 A No.

1 HECTOR HERNANDEZ

2 Q No.

3 Where was that at?

4 A In 22 Cornwall.

5 Q 22 Cornwall.

6 Did you ever live with Mr. Barahona? Were  
7 you guys ever roommates?

8 A He used to live at the house before where I  
9 live.

10 Q Which one are you referring to?

11 A The 22.

12 Q 22 Cornwall?

13 A Yes.

14 Q Is that address 22 Cornwall or Court Wall;  
15 do you know?

16 A Court Wall.

17 Q Yeah, okay, thank you.

18 Before living at 135 Clinton, where did you  
19 live?

20 A 100 Darmon Street in Hempstead.

21 MR. INGOGLIA: How do you spell that?

22 THE REPORTER: D-A-R-M-O-N, Street.

23 Q How long did you live at 100 Darmon Street  
24 in Hempstead?

25 A For about one year.

1 HECTOR HERNANDEZ

2 Q Where did you live before that?

3 A 143 William Street in Hempstead.

4 Q Who did you live there with?

5 A I was renting, always.

6 Q Was there a time where you ever lived out  
7 of New York State?

8 A Yes.

9 Q When?

10 A In 2008.

11 Q Where did you live?

12 A In Dallas, Texas.

13 Q Did you live there with Mr. Barahona?

14 A No.

15 Q Did you know Mr. Barahona in 2008?

16 A No.

17 Q When for the first time did you meet  
18 Mr. Barahona?

19 A I don't remember. It has been a long  
20 time.

21 Q Yeah, well, let's try.

22 Was it 10 years or more than 10 years?

23 A No, less.

24 Q Less than 10 years ago?

25 A Yes, less than 10 years.

1 HECTOR HERNANDEZ

2 Q Was it less than five years ago?

3 A Something like that.

4 Q Besides Paradise Tree Service, did you and  
5 Mr. Barahona work anywhere else together or at the  
6 same time?

7 A No.

8 Q How long did you work for Paradise Tree  
9 Service?

10 A For about one year.

11 Q Can you give me the dates you worked for  
12 Paradise Tree Service, please?

13 A In 2019 to 2020.

14 Q From 2019 to 2020?

15 A Yes.

16 Q When in 2019 did you start working for  
17 Paradise Tree Service?

18 A I don't remember.

19 Q Was it during the summertime?

20 A It was the summer.

21 Q The summer?

22 A Uh-huh, yes.

23 Q Of 2019?

24 A Yes.

25 Q When did you stop working for Paradise Tree

1 HECTOR HERNANDEZ

2 Service?

3 A In the beginning of 2021.

4 Q 2021?

5 A Yes, the last day was in December  
6 of 2020.

7 Q Why did you stop working for Paradise Tree  
8 Service?

9 A He didn't give me anymore work to do.

10 Q How much did you get paid from Paradise  
11 Tree Service when you worked there?

12 A \$150 per day.

13 Q Did you ever make more than that?

14 A Money, no.

15 Q Yes, money.

16 A No.

17 Q Did you get anything else, any other perks  
18 for working there, other benefits?

19 A No.

20 Q Okay.

21 And when you worked for Paradise Tree  
22 Service, what were your normal hours?

23 A 10 to 11, sometimes 12.

24 Q I'm talking about when did you come in  
25 normally? When did you go to the yard normally,

1 HECTOR HERNANDEZ

2 let's start there.

3 A We used to arrive around 7:00, sometimes  
4 five minutes before seven.

5 Q Uh-huh.

6 Then when would you come -- when would you  
7 return to the yard usually?

8 A When I return?

9 Q Yeah.

10 A 7:00, 6:00.

11 Q Did you ever return to the yard before  
12 6:00 p.m.?

13 A Sometimes, yes.

14 Q How often?

15 A Not often.

16 Q What does not often mean, does that mean  
17 less than two days per week or something else?

18 A One day maybe.

19 Q One day per week?

20 A Yes.

21 Q Did you ever work for Paradise Tree Service  
22 during the months of December, January and  
23 February?

24 A Sometimes, yes, for a few days, two days,  
25 three days.



1 HECTOR HERNANDEZ

2 MR. MOSER: Can you put your hands  
3 down on the table instead of like this  
4 (indicating).

5 Q For those two or three days you worked for  
6 Paradise Tree Service each week during the months of  
7 December, January and February, what were your normal  
8 hours each day, from what time to what time?

9 A We started working since we get there  
10 because we had to get ready the tools.

11 Q What time would that be?

12 A At 7:00, and we had to come back and unload  
13 the truck, so we always had to come back there.

14 Q What time would you normally come back  
15 there, and I'm talking during the months of December,  
16 January and February?

17 A Well, those days were kind of empty, so I  
18 would say around 5:00.

19 Q Are you claiming that Mr. Nieto failed to  
20 pay you for the overtime that you worked?

21 A Yes.

22 Q What's your calculation as to how many  
23 overtime hours he failed to pay you for?

24 A I don't know.

25 Q You filed a complaint in this action,

1 HECTOR HERNANDEZ

2 correct?

3 A Yes.

4 \* Q You've seen a copy of the complaint

5 A Copy?

6 Q Uh-huh.

7 MR. MOSER: Objection.

8 Don't answer the question.

9 MR. INGOGLIA: You're going to have to  
10 say objection, don't answer then.

11 MR. MOSER: Understood.

12 MR. INGOGLIA: Mark it for a ruling,  
13 please.

14 You don't want him to answer if he saw  
15 a copy of the complaint that he filed in  
16 this action? We got that straight?  
17 Okay.

18 Can we mark that?

19 (An 11-page Summons in a civil  
20 action was received and marked Defendants'  
21 Exhibit E for identification, as of this  
22 date.)

23 Q All right.

24 Mr. Hernandez, I'm showing you what has  
25 been marked as Defendants' Exhibit E with today's

1 HECTOR HERNANDEZ

2 date for identification. Take a look at that  
3 document, please, and let me know if you recognize  
4 what that document is (handing).

5 (Witness examines document.)

6 A What did you just say?

7 Q Have you ever seen that document before?

8 A Yes.

9 Q Okay.

10 Do you know what that document is?

11 A No.

12 Q Okay, fine.

13 MR. INGOGLIA: Can you mark that.

14 (A three-page Declaracion de Hector  
15 Hernandez was received and marked  
16 Defendants' Exhibit F for identification,  
17 as of this date.)

18 Q Mr. Hernandez, I'm showing you what has  
19 been marked for identification as Defendants' Exhibit  
20 F with today's date. Do you recognize that document  
21 (handing)?

22 (Witness examines document.)

23 A Yes.

24 Q What is that document?

25 A That's the declaration.

1 HECTOR HERNANDEZ

2 Q Were there times during the months of March  
3 through November where your workday would end sooner  
4 than 5:00 p.m.?

5 A Yes, sometimes.

6 Q How often?

7 A Once a week maybe.

8 Q Were there times when that happened twice a  
9 week or more?

10 A Twice sometimes, but after that we always  
11 work late.

12 Q What does he mean by that statement?

13 A That sometimes it happens once or twice.

14 Q But he said after that we always work late.  
15 What does he mean by that?

16 A There were like some weeks that we didn't  
17 finish at that time. We work late.

18 Q When you say there were some weeks you  
19 didn't finish at that time, we work late, what do you  
20 mean by late? What time is late?

21 A 6:00, 6:30, 7:00.

22 Q When you say you work till 6:00, 6:30,  
23 7:00, would that be at a job site or would that be  
24 when you finish at Paradise's yard?

25 A No, we still have to go and leave the

1 HECTOR HERNANDEZ

2 equipment there.

3 Q So what I'm asking is when you say we  
4 wouldn't get done until 6:00, 6:30 or 7:00, do you  
5 mean you wouldn't finish at the yard until that time?

6 MR. INGOGLIA: I'll just ask it that  
7 way.

8 A At the job site where we were working, we  
9 still have to go to the yard to leave the equipment,  
10 the tools.

11 Q I understand, but what time would you drop  
12 off the equipment and the tools?

13 A Sometimes we used to leave around eight  
14 o'clock.

15 Q The yard?

16 A Yes, if we were far away, we make it around  
17 that time.

18 Q Were there times when you used to leave the  
19 yard at 5:00 p.m.?

20 A Yes.

21 Q Were there times when you used to leave the  
22 yard at 4:00 p.m.?

23 A Yes.

24 Q And were there times you used to leave the  
25 yard by 3:00 p.m.?

1 HECTOR HERNANDEZ

2 A Sometimes we left around 1:00 or 2:00 p.m.  
3 and he only pay for half a day.

4 Q How did you get paid by Mr. Nieto, check,  
5 cash, something else?

6 A Cash.

7 Q Do you have any record of the days when he  
8 allegedly paid you for only half the day?

9 A No.

10 Q Do you have any records of what he paid you  
11 at any time, when you were employed by him?

12 A No.

13 Q Did you deposit any of the money that you  
14 were paid by Mr. Nieto into any bank account?

15 A No.

16 Q Did you take any of the money that you were  
17 paid by Mr. Nieto and wire it to someone else?

18 A No.

19 Q Did you ever make the claims that you're  
20 making in this action, in any other prior action?

21 A No.

22 Q Okay.

23 Prior to living in Dallas, where did you  
24 live?

25 A In Spring Valley.

1 HECTOR HERNANDEZ

2 Q Where is that?

3 A That was the name of the street. I don't  
4 remember where it was.

5 Q Was it in Texas?

6 A In Dallas, Texas.

7 Q Okay, but prior to living in Dallas, Texas,  
8 where did you move there from?

9 A From El Salvador.

10 Q What year did you move here from  
11 El Salvador?

12 A In 2010.

13 Q Would it be fair to say that the first  
14 place that you lived in the United States was in  
15 Texas?

16 A Yes.

17 Q Do you possess a New York State driver's  
18 license?

19 A Permit.

20 Q You have a permit, learner's permit?

21 A Yes.

22 Q And that's from New York State?

23 A Yes.

24 MR. INGOGLIA: We call for a copy or  
25 for production of the Plaintiff's New York



1 HECTOR HERNANDEZ

2 State learner's permit.

3 MR. MOSER: We'll take it under  
4 advisement.

5 Q That learner's permit, what name appears on  
6 it?

7 A The one that I just gave you.

8 Q Which is what?

9 A Hector Antonio Hernandez.

10 Q Is Antonio on it as well or is it Hector A.  
11 Hernandez?

12 A No, the whole thing.

13 Q All right, we're just finishing up here.

14 You have a wife. Do you and your wife have  
15 any children?

16 A No.

17 MR. INGOGLIA: That's all I got.

18 MR. MOSER: Thank you. No cross.

19 THE VIDEOGRAPHER: We are going off  
20 the record. The time is 2:18.

21 MR. MOSER: I'm sorry, I have to go  
22 back on because I didn't do it. I  
23 apologize.

24 THE VIDEOGRAPHER: We're now back on  
25 the record. The time is 2:18.



1 HECTOR HERNANDEZ

2 MR. MOSER: I just want to reserve the  
3 right on the record of my clients to review  
4 and make any corrections to the written  
5 transcript that was made and just to  
6 memorialize on the record that the  
7 deposition of the Defendant is scheduled  
8 for tomorrow and no interpreter has  
9 been requested.

10 MR. INGOGLIA: Do you want an  
11 interpreter?

12 MR. NIETO: It doesn't matter.

13 MR. INGOGLIA: We'll go off. Thank  
14 you.

15 THE VIDEOGRAPHER: We're going off the  
16 record. The time was 2:19.

17 -oOo-

18 (Time noted: 2:19 p.m.)

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A C K N O W L E D G M E N T

STATE OF NEW YORK )  
:  
COUNTY OF )

I, HECTOR HERNANDEZ, hereby certify  
that I have read the transcript of my testimony taken  
under oath in my deposition of February 6, 2023; that  
the transcript is a true, complete and correct record  
of what was asked, answered and said during this  
deposition, and that the answers on the record as  
given by me are true and correct.

\_\_\_\_\_  
HECTOR HERNANDEZ

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023

\_\_\_\_\_  
Notary Public

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I N D E X

| WITNESS          | EXAMINATION BY | PAGE |
|------------------|----------------|------|
| Hector Hernandez | Mr. Ingoglia   | 5    |

E X H I B I T S

| DEFENDANTS' | DESCRIPTION               | PAGE |
|-------------|---------------------------|------|
| E           | Summons in a civil action | 14   |
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I N S E R T S

| ATTORNEY'S NAME | PAGE |
|-----------------|------|
| Mr. Ingoglia    | 14   |

R E Q U E S T S

| DESCRIPTION   | PAGE |
|---|------|
| Production of the Plaintiff's New York State learner's permit | 19   |

C E R T I F I C A T E

STATE OF NEW YORK )

: SS:

COUNTY OF NASSAU )

I, LISA CONWAY, a Shorthand Reporter and  
Notary Public within and for the State of New York,  
do hereby certify:

That HECTOR HERNANDEZ, the witness whose  
deposition is hereinbefore set forth, was duly sworn  
by me, and that such deposition is a true record of  
the testimony given by such witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage,  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 6th day of February, 2023.

*Lisa Conway*

LISA CONWAY



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